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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,426	12/12/2003	Martha Jo Meadows Brown	IFF-64	3866

48080 7590 04/30/2007  
INTERNATIONAL FLAVORS & FRAGRANCES INC.  
521 WEST 57TH ST  
NEW YORK, NY 10019

EXAMINER
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WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/30/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/734,426

Applicant(s)

BROWN ET AL.

Examiner

Steven L. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) 3,5,6,9-16,19,21-28,30 and 34-43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,7,8,17,18,20,29, and 31-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 5/14/04 & 5/12/05
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

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The election, without traverse, filed 2/12/07, to the restriction requirement mailed 1/11/07, has been received. Claims 1,2,4,7,8,17,18,20,29,31,32,33, and 36 are listed as readable on the elected species and sub-species. Note, however, that claim 36 is directed to a different species than that which was elected, since claim 36 is directed to an external stimulus whereas the species elected (Ile) is directed to normal conditions of temperature and pressure. Therefore, claim Claims 3,5,6,9-16,19,21-28,30,34-43 are withdrawn from further consideration as being drawn to non-elected species. An action on the merits of the elected claims/species 1,2,4,7,8,17,18,20,29,31,32, and 33 follows.

Claims 1,2,4,7,8,17,18,20,29,31,32,33, and 36 are rejected under 35Usc112, 1st paragraph as being non-enabling. There appears to be at the minimum an inconsistency, and perhaps even an inaccuracy in the usage of the term "off-odor eliminating compound" as well as the mechanism for eliminating the odor. As noted in the last Office action, mailed 1/11/07, the specification appears at some places to make a distinction between the term "off-odor eliminating compounds" and the term "scavengers" and at other points the terms appear to have the same meaning. Since the specification never specifically defines the phrase "off-odor eliminating compounds", the result is confusion. Is this a generic phrase that is intended to mean a substance which eliminates the perception of odor by any mechanism, whether by masking with a good aroma, chemical reaction to neutralize the aroma, or by capturing the malodor by an absorber? The specification appears to use the term in reference to compounds which volatilize and (chemically?) react with the malodors in the air. There appears to be no disclosure of any specific compounds that do this. If this description of the mechanism is

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inaccurate, it should be corrected. If this is a correct description of the mechanism, then any information relative to such compounds is requested. The specification also appears to refer to scavengers as non-volatile adsorbents. As also noted previously the only "off-odor eliminating compound" that appears to be disclosed is a sulphur scavenging compound, and specifically, a commercial product containing C16-C18 acids, predominantly linoleic acid. Note that the specification, in this particular instance, thus appears to use "off-odor eliminating compound" as a generic term with the term "scavenger" being a species. If, in fact, the only disclosed example of the odor eliminating compound is an absorbent (which is what the compounds appear to be), then any reference to volatile, odor eliminating compounds, other than purely masking compounds, would be incorrect. Note, too, if the off-odor eliminating compound is an absorbent, then it is not seen how it could "contact" the product. Clarification and/or correction of these issues is requested. Applicant is cautioned about the introduction of New Matter. It is noted that applicant's response filed 2/12/07, attempted to address these issues, but did not clear up the inconsistencies detailed above.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,4, 7, 20,29, 31, and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Visoli (WO96/40429) or by Corbin et al (WO96/22160), both of whom

teach a method and packaging wherein a a package for food can be provided with an odor eliminating compound, which compound can eliminate sulphur by scavenging and wherein the compounds can be positioned as part of an innermost layer that can be the sealing layer and wherein the layer or sheet can be formed into a composite structure by laminating the layers together.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Visoli (WO96/40429) or Corbin et al (WO96/22160).

Claim 33 recites the package is a resealable pouch. Both references disclose the package can be a bag. It is, of course, notoriously conventional to make resealable bags. To modify Visoli (WO96/40429) or Corbin et al (WO96/22160), and employ a conventionally structured resealable bag for its art recognized and applicant's intended function would have been obvious.

Claims 8,17, and 18 are rejected under 35USC102(b) as being anticipated by Holzner (4,990,381).

It is noted that, as discussed above, the nature of the compounds and their mechanisms are not clear. Claim 8 recites that the compound (not the malodor) is in an amount sufficient to diffuse within the interior of the package. Thus, the compound appears to be volatile. Whether this is an accurate recitation and disclosure still needs

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to be cleared up. In any case, the claim is being construed as reciting some type of scent which would mask a malodor. Holzner not only discloses scents in the structural context recited, but also refers to "deodorizing compounds".

The remainder of the references cited on the PTO892 forms are cited as pertinent art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Steve Weinstein*  
STEVE WEINSTEIN  
PRIMARY EXAMINER  
1761  
4/25/07